

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

SQUARE 1 BANK,

Plaintiff,

vs.

HENRY LO, an individual; and
ABSOLUTELYNEW, INC., a California
corporation,

Defendants.

Case Number: C 12-5595 JSC

Date: May 30, 2013
Time: 1:30 p.m.
Ctm: F

JOINT CASE MANAGEMENT
STATEMENT & [PROPOSED] ORDER

The parties to the above-entitled action jointly submit this JOINT CASE MANAGEMENT STATEMENT & PROPOSED ORDER pursuant to the Standing Order for All Judges of the Northern District of California dated July 1, 2011 and Civil Local Rule 16-9.

1. Jurisdiction & Service

The basis for the court's subject matter jurisdiction over plaintiff's claims and defendant's counterclaims, whether any issues exist regarding persona jurisdiction or venue, whether any parties remain to be served, and, if any parties remain to be served, a proposed deadline for service.

The jurisdiction of this Court is invoked pursuant to 28 U.S.C. Section 1332(a), which confers subject matter jurisdiction on the United States District Court in all cases in which there is diversity of citizenship and the amount in controversy exceeds the sum of \$75,000, exclusive of interest and costs. Plaintiff Square 1 Bank ("Plaintiff") is a citizen of the State of North Carolina. Venue is properly laid in this Court pursuant to 28 U.S.C. Section 1391(a), as defendant Henry Lo ("Lo") is a resident of the County of San Francisco, and the principal place

1 of business of defendant AbsolutelyNew, Inc. ("ANI") is located in the County of San Francisco.
2 All defendants have been served and all parties have appeared.

3
4 **2. Facts**

5 *A brief chronology of the facts and a statement of the principal factual issues in dispute.*

6 Plaintiff alleges that it made loans to ANI and obtained a security interest in all of ANI's
7 personal property. It alleges that loans have not been paid in full, and as of October 31, 2012 the
8 sum of at least \$4,612,310.63 was due, owing and unpaid. Plaintiff alleges that ANI and Lo
9 made representations concerning ANI's financial condition that induced Plaintiff to make loans
10 to ANI, the representations were not true, and had those representations not been made Plaintiff
11 would not have made the loans to ANI. Plaintiff further alleges that Lo caused ANI funds to be
12 used for purposes other than ANI's business and that Lo thereby incurred obligations to ANI in
13 the amount of those funds, which obligations Plaintiff claims the right to enforce based on its
14 security interest in ANI's personal property. Plaintiff disputes Lo's statements and contentions
15 below.

16 Lo claims that some of the monies Plaintiff seeks involve time periods before Plaintiff's loan
17 was made to ANI. Lo further claims that (i) most if not all of these monies involve Lo's payment
18 of legitimate ANI debt arising as a result of activities of IPR, (ii) IPR was ANI's predecessor
19 company, and (iii) ANI was legally obligated to pay IPR's debts.

20
21 Lo claims he made no misrepresentations to Plaintiff, that Plaintiff relied on its own due
22 diligence and also on its relationship with, and representations by, AbsolutelyNew Holdings, Inc.
23 ("ANI Holdings") and the investment firm funding ANI Holdings, Artiman Ventures. ANI
24 Holdings is the holding company owning ANI.

25
26 As to alleged post-loan monies of ANI withdrawn by Lo, Lo admits taking reimbursement for
27 deposits he had personally made and guaranteed with ANI's merchant bank, and for payroll
28

1 taxes for which he was liable as the CFO of IPR and ANI, and which ANI and its predecessor
2 IPR had never paid and were not intending to pay.

3
4 ANI disputes Lo's statements above.

5
6 **3. Legal Issues**

7 *A brief statement, without extended legal argument, of the disputed points of law, including reference to specific
8 statutes and decisions.*

9 Plaintiff contends that it has the right not only to collect the loan obligations it claims due and
10 owing from ANI but that Lo is also responsible for the entire amount unpaid because Plaintiff
11 would not have made the loans to ANI but for the alleged misrepresentations of ANI's financial
12 condition. Plaintiff further contends that Lo has a contractual or quasi-contractual obligation to
13 repay the ANI funds that he allegedly caused to be used for purposes other than ANI's business
14 (see, e.g., Branche v. Hetzel, 241 Cal. App. 2d 801, 807 (1996)) and that Plaintiff, based on its
15 security interest in ANI's assets and its rights under the loan agreement, Article 9 of the Uniform
16 Commercial Code, and other applicable law, is entitled to enforce and collect Lo's obligations.

17 Lo claims that as a successor corporation to IPR, ANI was liable as IPR's successor for the debts
18 of IPR. In response to Lo's statements above, ANI respectfully refers the Court to the last
19 paragraph of section 2, above.

20
21 **4. Motions**

22 *All prior and pending motions, their current status, and any anticipated motions.*

23 Plaintiff anticipates filing and/or reserves the right to file an application for attachment against
24 Lo and a motion for summary judgment and/or summary adjudication.

1 5. Amendment of Pleadings

2 *The extent to which parties, claims, or defenses are expected to be added or dismissed and a proposed deadline for*
3 *amending the pleadings.*

4 At this time Plaintiff does not expect to amend its First Amended Complaint or to add or dismiss
5 any party. ANI does not anticipate amending its answer to the First Amended Complaint but it
6 reserves its right to do so if, during the course of the preparation of its case, it determines that
7 doing so is necessary or advisable.

8 6. Evidence Preservation

9 *A brief report certifying that the parties have reviewed the Guidelines Relating to the Discovery of Electronically*
10 *Stored Information ("ESI Guidelines"), and confirming that the parties have met and conferred pursuant to Fed. R.*
11 *Civ. P. 26(f) regarding reasonable and proportionate steps taken to preserve evidence relevant to the issues*
12 *reasonably evident in this action. See ESI Guidelines 2.01 and 2.02, and Checklist for ESI Meet and Confer.*

13 The parties have agreed that documents will be produced in electronic format as appropriate,
14 with the particular format to be agreed upon by the parties at or before the time of production
15 based upon the type of material to be produced.

16 7. Disclosures

17 *Whether there has been full and timely compliance with the initial disclosure requirements of Fed. R. Civ. P. 26 and*
18 *a description of the disclosures made.*

19 The parties intend to make their initial disclosures on or before May 31, 2013.

20 8. Discovery

21 *Discovery taken to date, if any, the scope of anticipated discovery, any proposed limitations or modifications of the*
22 *discovery rules, a brief report on whether the parties have considered entering into a stipulated e-discovery order, a*
23 *proposed discovery plan pursuant to Fed. R. Civ. P. 26(f), and any identified discovery disputes.*

24 Discovery has not yet commenced. The parties at this time anticipate propounding written
25 discovery and taking depositions and do not intend to limit or modify discovery rights, except
26 that the parties agree that any privileged attorney-client communications in the course of this
27 litigation do not need to be listed on a privilege log. They respectfully request that completion
28 and approval of a formal discovery plan occur at the continued case management conference as
set forth in paragraph 17, below.

1 9. Class Actions

2 *If a class action, a proposal for how and when the class will be certified.*

3 Not applicable.

4 10. Related Cases

5 *Any related cases or proceedings pending before another judge of this court, or before another court or*
6 *administrative body.*

7 None.

8 11. Relief

9 *All relief sought through complaint or counterclaim, including the amount of any damages sought and a description*
10 *of the bases on which damages are calculated. In addition, any party from whom damages are sought must describe*
11 *the bases on which it contends damages should be calculated if liability is established.*

12 Plaintiff seeks damages according to proof, in the sum of at least \$4,612,310.63 as of October
13 31, 2012, based on the amount due, owing and unpaid on its loans to ADI and for which
14 damages Plaintiff alleges that both ANI and Lo are responsible. Alternative sums of damages
15 alleged in Plaintiff's First Amended Complaint are based on amounts of ANI funds that Plaintiff
16 alleges were used for purposes other than ANI's business.

17 12. Settlement and ADR

18 *Prospects for settlement, ADR efforts to date, and a specific ADR plan for the case, including compliance with ADR*
19 *L.R. 3-5 and a description of key discovery or motions necessary to position the parties to negotiate a resolution.*

20 The parties agree that this matter should be submitted to private mediation.

21 13. Consent to Magistrate Judge For All Purposes

22 *Whether all parties will consent to have a magistrate judge conduct all further proceedings including trial and entry*
23 *of judgment. X YES NO*

24 14. Other References

25 *Whether the case is suitable for reference to binding arbitration, a special master, or the Judicial Panel on*
26 *Multidistrict Litigation.*

1 The parties agree that no such reference is necessary at this time.

2
3 **15. Narrowing of Issues**

4 *Issues that can be narrowed by agreement or by motion, suggestions to expedite the presentation of evidence at trial*
5 *(e.g., through summaries or stipulated facts), and any request to bifurcate issues, claims, or defenses.*

6 The parties may be able to stipulate to basic facts concerning, among other things, Plaintiff's
7 loan agreement with ANI .

8
9 **16. Expedited Trial Procedure**

10 *Whether this is the type of case that can be handled under the Expedited Trial Procedure of General Order 64,*
11 *Attachment A. If all parties agree, they shall instead of this Statement, file an executed Agreement for Expedited*
12 *Trial and a Joint Expedited Case Management Statement, in accordance with General Order No. 64, Attachments B*
13 *and D.*

14 The parties do not agree to the Expedited Trial Procedure.

15
16 **17. Scheduling**

17 *Proposed dates for designation of experts, discovery cutoff, hearing of dispositive motions, pretrial conference and*
18 *trial.*

19 The parties propose that the Case Management Conference be continued for a period of
20 approximately 120 days to allow the parties time to schedule private mediation, without limiting
21 the parties' rights to conduct discovery. The parties anticipate that written discovery and
22 depositions will proceed for a period of approximately six to nine months, with expert witness
23 designation and dispositive motions to follow thereafter. They respectfully request that
24 completion and approval of a formal discovery plan occur at the continued case management
25 conference.

26
27 **18. Trial**

28 *Whether the case will be tried to a jury or to the court and the expected length of the trial.*

Plaintiff has demanded trial by jury.

1 19. Disclosure of Non-party Interested Entities or Persons

2 *Whether each party has filed the "Certification of Interested Entities or Persons" required by Civil Local Rule 3-16.*
3 *In addition, each party must restate in the case management statement the contents of its certification by identifying*
4 *any persons, firms, partnerships, corporations (including parent corporations) or other entities known by the party*
5 *to have either: (i) a financial interest in the subject matter in controversy or in a party to the proceeding; or (ii) any*
6 *other kind of interest that could be substantially affected by the outcome of the proceeding.*

7 To the extent that the parties have not filed separate Certifications of Interested Entities or
8 Persons they will do so. The entities and persons, other than the named parties herein, listed or
9 to be listed on such Certifications include: AbsolutelyNew Holdings, Inc.; Artiman Ventures.

10 20. Other

11 *Such other matters as may facilitate the just, speedy and inexpensive disposition of this matter.*

12 The parties are not aware of any such other matters at this time.

13
14
15 Dated: May 23, 2013

/s/ Mark D. Hurwitz

16 Mark D. Hurwitz

17 Counsel for Plaintiff Square 1 Bank

18
19 Dated: May 23, 2013

/s/ John S. Claassen

20 John S. Claassen

21 Counsel for Defendant AbsolutelyNew, Inc.

22
23
24 Dated: May 23, 2013

/s/ John O'Connor

25 John O'Connor

26 Counsel for Defendant Henry Lo

CASE MANAGEMENT ORDER

The above JOINT CASE MANAGEMENT STATEMENT & PROPOSED ORDER is approved as the Case Management Order for this case and all parties shall comply with its provisions. [In addition, the Court makes the further orders stated below:]

IT IS SO ORDERED.

Dated:

UNITED STATES DISTRICT/MAGISTRATE JUDGE

29573

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is 815 Moraga Drive, Los Angeles, California 90049.

On May 23, 2013, I served the following documents described as: **JOINT CASE MANAGEMENT STATEMENT & [PROPOSED] ORDER** on the interested parties in this action as follows:

John Claassen, Esq.
CLAASSEN, Professional Corporation
1970 Broadway, Suite 525
Oakland, CA 94612
Email: john@claassenlegal.com

John O'Connor, Esq.
O'Connor and Associates
201 Mission Street, Suite 710
San Francisco, CA 94105
Email: john@joclaw.com

☒ By Service of Court via Notice of Electronic Filing ("NEF") Pursuant to controlling General Order(s), the foregoing document will be served by the Court via NEF and hyperlink to the document. I checked the CM/ECF docket for this action and determined that the following person(s) are on the Electronic Mail Notice List to receive NEF transmission at the email addresses indicated above.

☒ **(Federal)** I declare that I am employed in the office of a member of the Bar of this Court at whose direction the service was made. I declare under penalty of perjury under the laws of the United States of America that the above is true and correct.

Executed May 23, 2013, at Los Angeles, California.


Heidi Petrilli